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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

TREVARI MEDIA LLC, an Oregon limited liability company, and **UNDERWATER INVESTIGATIONS LLC**, an Oregon limited liability company,

Plaintiffs,

v.

JOSHUA CANTU, an individual, doing business as **JUKE MOTION PICTURES**,

Defendant.

Case No. 6:23cv1879

FIRST AMENDED COMPLAINT
(Copyright Infringement; Breach of Contract)

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. Trevari Media LLC ("Trevari") and Underwater Investigations LLC ("UI") (collectively hereafter "Plaintiffs"), by and through Plaintiffs' attorneys, bring this action to challenge the actions of Joshua Cantu, doing business as Juke Motion Pictures (hereafter "Defendant"), with regard to the unlawful use of copyrighted images owned by Plaintiff Trevari, as well as the breach of several contracts, and this conduct caused Plaintiffs damages.

II. JURISDICTION AND VENUE

2. This is a civil action seeking damages and injunctive relief for copyright infringement, under the copyright laws of the United States, 17 U.S.C. § 101 et. seq., whereby the Defendant violated Plaintiff Trevaris's exclusive rights as copyright owner pursuant to 17 U.S.C. § 106.

3. As a result, this court has federal subject matter and original jurisdiction under 28 U.S.C. § 1331 and § 1338(a). This court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a) because the claims are related to claims for which this court has original jurisdiction and the claims form part of the same case or controversy.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because the Defendant resides within this judicial district and a substantial part of the events giving rise to Plaintiffs' claim occurred in this judicial district.

III. PARTIES

5. Plaintiff Trevari ~~Media LLC (hereafter "Trevari")~~ is an Oregon limited liability company with its headquarters in Deschutes County, Oregon.

6. Plaintiff ~~Underwater Investigations LLC~~ (“UI”) is an Oregon limited liability company with its headquarters in Deschutes County, Oregon.

7. Trevari was formed in 2017. UI was formed ~~on May 21, in~~ 2022 to undertake the more dangerous field work aspects of Trevari’s business operations. Trevari and UI will collectively be referred to hereafter as Adventures With Purpose (“AWP”).

8. ~~AWP-UI and Trevari~~ volunteers to search for, and solve, missing persons cold cases. ~~It-UI~~ is comprised of highly trained outdoorsmen.

9. ~~AWP-UI and Trevari~~ does not charge for ~~its-their~~ services. Rather, it has a revenue stream from YouTube and sells AWP-branded merchandise.

10. These income streams fund these vital searches.

11. ~~AWP’s-Trevari and UI’s~~ success has led to a very large domestic following. ~~AWP Trevari~~ has more than 3,000,000 followers on YouTube, 1,600,000 followers on Facebook, ~~770,000 followers on TikTok,~~ and 152,000 followers on Instagram.

12. Defendant Joshua Cantu is an individual who resides in Deschutes County, Oregon and does business under the assumed business name Juke Motion Pictures (“Juke”).

13. Cantu primarily makes YouTube videos. He uploads his videos mainly through his YouTube account which uses his personal name.

14. However, Cantu’s YouTube account cross-references his assumed business name Juke.

15. This is the same with his Instagram account.

16. In contrast, on Facebook, he uploads videos under his assumed business name Juke.

17. His website (<http://jukemotionpictures.com>) lists Juke at the bottom of the

homepage in the place usually reserved to identify the owner of the website.

IV. FACTUAL ALLEGATIONS

18. AWP's searches for missing persons usually involve searching in lakes and rivers.

19. When AWP finds something heavy, they use a "lift bag", which resembles a giant balloon, to raise the item to the surface.

20. In or about November, 2020, ~~AWP~~Trevari hired Cantu as an independent contractor to make lift bags.

21. At the beginning of 2021, Cantu's job duties at Trevari~~AWP~~ included assisting with video production, such as camera work.

22. Upon the formation of UI, Cantu signed two written agreements that contained the terms of the oral agreements he had previously been subject to with Trevari as an independent contractor.

22-23. The terms of the oral agreements Cantu had previously entered into with Trevari as an independent contractor prior to July 2022, prohibited, among other things, Cantu's personal use of any work Cantu creates, or otherwise contributes to creating, for Trevari without Trevari's permission.

23-24. The Employment Agreement, effective as of July 29, 2022, is attached hereto and incorporated herein as Exhibit A.

24-25. The Non-Disclosure Agreement, also effective as of July 29, 2022, is attached hereto and incorporated herein as Exhibit B.

25-26. Further, Cantu entered into a written Editor Agreement with Trevari, effective as of September 30, 2022, that contained the terms of the oral employment agreements he had previously

been subject to with Trevari as an independent contractor, since his editing work continued to be undertaken at Trevari even as his work as a camera operator was done at UI. The Editor Agreement is attached hereto and incorporated herein as Exhibit C.

26:27. At all times, Cantu's work for AWP was a work-for-hire.

27:28. ~~AWP-Trevari~~ was the sole owner of all the video footage and related work product arising from Cantu's work. This is clearly stated in Paragraph 7 of the Editor Agreement.

28:29. Cantu's employment was ~~mutually~~ terminated on November 8, 2022, the terms of which, including without limitation two months of severance, were memorialized in a Termination Letter, which is attached hereto and incorporated herein as Exhibit D.

29:30. ~~AWP-Trevari~~ enjoys copyrights in all of its videos, including those posted on YouTube, and all of the footage related to those videos whether used in the final cut of the video or not.

30:31. During Cantu's employment, ~~AWP-Trevari~~ did allow Cantu to use ~~AWP-Trevari~~ video footage to create a specific kind of content called Behind the Scenes (hereafter "BTS") videos and posted them to Defendant's YouTube account.

31:32. BTS videos allowed by ~~AWP-Trevari~~ could not tell the same story as ~~AWP-Trevari~~ videos, could not detract from ~~AWP's-Trevari's~~ viewership, and could not have a discernible story line. These videos were to be purely behind the scenes footage similar to short films documenting the making of a film.

32:33. Specifically for the purposes of this matter, ~~AWP-Trevari~~ maintains copyrights in the raw footage of the videos listed and incorporated herein as Exhibit E as well as the final cut of the videos.

33.34. Cantu wrongfully used video footage from the shoots listed in Exhibit E, including copyrighted material shot by AWP-Trevari but not included in the final edits of the videos, for the gain of himself and Juke, in videos he posted on YouTube, listed and incorporated herein as Exhibit F.

34.35. None of the videos listed in Exhibit F were BTS videos, and none of them were authorized by AWPTrevari.

35.36. All of the videos listed in Exhibit F intended to capitalize on the very stories AWP was paying Cantu to make for AWPTrevari.

36.37. Thus, all of the videos listed in Exhibit F infringe AWP-Trevari copyrights.

37.38. It appears that after the existence of the written Employment Agreement with UI, referenced above, Cantu made videos using footage that was shot before the written Employment Agreement in violation of Paragraph 5 of the Employment Agreement, as well as numerous writings between the parties. On or about February 23, 2023, AWP-Trevari notified Cantu that the video in Exhibit F entitled “Rewind,” along with 3 other videos not listed in Exhibit F, were a copyright violation and a breach of his Employment, Editor, and Non-Disclosure Agreements.

38.39. Cantu voluntarily removed the Rewind video from public view, but it is still available to watch privately.

39.40. Between November 26-28, 2023, AWP-Trevari filed copyright infringement complaints with YouTube against the Defendant for all of the videos in Exhibit F except Rewind. In the correspondence between Trevari and YouTube, specific sections of the videos are matched-up between Trevari’s original videos and Cantu’s infringing videos by referencing their time stamps. Trevari is informed and believes and thereon alleges that YouTube provided this

correspondence to Cantu, but in the event it did not, Trevari will produce it in initial disclosures. These matches are not exhaustive of all the video that was wrongfully used by Cantu. Rather, they were a sample provided to YouTube to verify the infringement. As noted, Cantu's videos have now been taken down by Cantu, or made private by Cantu, preventing Trevari's access to them to complete the matching process. However, Trevari watched the videos carefully and all of Cantu's videos alleged to infringe herein contain Trevari's copyrighted work. Plaintiff Trevari will seek Cantu's videos in discovery, and complete the analysis.

40.41. YouTube's complaint policy removes the infringing video and gives the infringer a chance to file a Counter Notification if the infringer believes their use is not infringing. If the infringer files a Counter Notification, then the complainant has ten business days to commence litigation against the infringer seeking the infringer be enjoined from using said video.

41.42. Cantu filed Counter Notifications for all of the infringing videos set forth in paragraph 39, above. Accordingly, AWP-Trevari has no choice but to commence this proceeding against Defendant seeking, in part, a court order to restrain the foregoing infringement.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Copyright Infringement)

(Plaintiff Trevari against Defendant)

42.43. Plaintiffs incorporate by reference paragraphs 1-41 of this Complaint as though fully stated herein.

43.44. Plaintiff Trevari did not consent to, authorize, permit, or allow in any manner the described use of Plaintiff Trevari's unique and original material and/or work on Defendant's

website.

44.45. Plaintiffs are informed and believe and thereon allege that the Defendant breached 17 U.S.C. §501 Title 17 of the U.S. Code in that he published, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit, Plaintiff Trevari's original and unique works without the Plaintiffs' consent or authority and acquired monetary gain and market benefit as a result.

45.46. As a result of each and every one of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b).

46.47. As a further remedy, Plaintiffs-Trevari seeks a court order to restrain the foregoing infringement via a preliminary injunction by noticed motion to be filed at the appropriate time early in this matter, followed by a judgment for a permanent injunction.

SECOND CLAIM FOR RELIEF

(Breach of Non-Disclosure Agreement)

(Plaintiff UI against Defendant)

47.48. Plaintiffs incorporate by reference paragraphs 1-46 of this Complaint as though fully stated herein.

48.49. Cantu did business with and solicited business contacts found or otherwise referred by AWP-UI for purposes of circumventing AWPUI without AWP's-UI's written approval.

49.50. Cantu solicited and engaged in business with AWP's-UI's business contacts Dave Sparks, Jacob Grubbs, Britain Lockhart, and Doug Bishop, all of whom he met through AWPUI.

50.51. Engaging in the above without AWP's-UI's written approval violates Section 4 of the Non-Disclosure Agreement.

~~51.~~52. Cantu's videos listed in Exhibit F used the same formula as ~~AWP~~UI in regards to how it tells a story.

~~52.~~53. Cantu used ~~AWP~~UI trade secret sonar skills in the videos listed in Exhibit F.

~~54.~~ These trade secret skills were confidential information as defined in Section 1 of the Non-Disclosure Agreement.

~~53.~~55. UI has made reasonable efforts to maintain the secrecy of such information at all relevant times and derives independent economic value from using the information.

~~54.~~56. Cantu's acts referenced in the abovepreceding paragraphs violates the Limited License to Use this Information contained in Section 8 of the Non-Disclosure Agreement.

~~55.~~57. Cantu used the confidential information to solicit ~~AWP's~~Trevari's followers on YouTube, which is a violation of Section 2 of the Non-Disclosure Agreement.

~~56.~~58. Section 3 of the Non-Disclosure Agreement entitles Plaintiff UI to injunctive relief.

~~57.~~59. Section 10 of the Non-Disclosure Agreement entitles the prevailing party to Attorney's Fees.

~~58.~~60. As a result of each and every breach of the Non-Disclosure Agreement, Plaintiff UI is entitled to any actual damages and injunctive relief.

THIRD CLAIM FOR RELIEF

(Breach of Written Employment Agreement)

(Plaintiff UI against Defendant)

~~59-61.~~ Plaintiffs incorporate by reference paragraphs 1-58 of this Complaint as though fully stated herein.

~~60-62.~~ As set forth in the prior paragraphs, Cantu's personal use of the footage filmed for ~~AWP-UI~~ without ~~AWP's-UI's~~ authorization violated Section 5 of the written Employment Agreement between Plaintiff UI and Defendant.

~~61-63.~~ Upon termination of his employment, Cantu did not return ~~AWP-UI~~ property, including but not limited to video footage. This was a violation of Section 13 of the written Employment Agreement.

~~62-64.~~ As a result of each and every breach of the Employment Agreement, Plaintiff UI is entitled to any actual damages.

FOURTH CLAIM FOR RELIEF

(Breach of Oral Employment Agreement)

(Plaintiff Trevari against Defendant)

~~63-65.~~ Plaintiffs incorporate by reference paragraphs 1-62 of this Complaint as though fully stated herein.

~~64-66.~~ Cantu's personal use of the footage filmed for AWP without ~~AWP's-Trevari's~~ authorization violated the oral Employment Agreement between Plaintiff Trevari and Defendant where said use took place prior to the written Employment Agreement between Plaintiff UI and Defendant.

~~65-67.~~ As a result of each and every breach of the oral Employment Agreement, Plaintiff Trevari is entitled to any actual damages.

FIFTH CLAIM FOR RELIEF

(Breach of Editor Agreement)

(Plaintiff Trevari against Defendant)

~~66-68.~~ Plaintiffs incorporate by reference paragraphs 1-65 of this Complaint as though fully stated herein.

~~67-69.~~ All of the following acts of Cantu violated Section 3 of the Editor Agreement:

- a. Cantu failed to place all completed edits on Plaintiff Trevari's SSD hard drive.
- b. Cantu failed to return Plaintiff Trevari's SSD hard-drive via pre-paid postage.
- c. Cantu failed to delete any and all files provided and/or used, including the files that he uploaded to his YouTube channel.
- d. Cantu used Plaintiff Trevari's footage that the Editor Agreement required to be deleted or returned.

~~68-70.~~ Cantu's actions also violate Section 2(e) and 7 of the Editor Agreement, which states that AWP-Trevari has ownership of all property and intellectual property of Cantu's work product under the scope of the agreement.

~~69-71.~~ As a result of each and every breach of the Editor Agreement, Plaintiff Trevari is entitled to any actual damages.

VI. DEMAND FOR JURY TRIAL

~~70-72.~~ Plaintiffs demand a trial by jury of any and all causes of action so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against Defendant:

1. Finding that Defendant infringed on Plaintiffs' copyrights in Plaintiffs' videos;
2. Finding that Defendant breached the Non-Disclosure Agreement;
3. Finding that Defendant breached the Employment Agreement;
4. Finding that Defendant breached the Editor Agreement;
5. Awarding actual damages pursuant to 17 U.S.C. §504(a)(1) for each instance of copyright infringement;
6. Awarding actual damages pursuant to the breach of the Non-Disclosure Agreement;
7. Awarding actual damages pursuant to the breach of the Employment Agreement;
8. Awarding actual damages pursuant to the breach of the Editor Agreement;
9. Awarding costs of litigation and reasonable attorneys' fees related to Plaintiffs' second cause of action pursuant to the terms of the Non-Disclosure Agreement;
10. A preliminary injunction followed by a judgment enjoining the Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. §502(a) and the Non-Disclosure Agreement;
11. Providing such other and further relief as the Court deems just and proper under the circumstances.

Dated this 21st day of February, 2024.

SCHWABE, WILLIAMSON & WYATT, P.C.

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